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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 23, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

**Forfeiture of General Lease No. S-5576, Rex Provisor and Pantip Provisor,
Lessee, Papa, South Kona, Hawaii, Tax Map Key: 3rd/8-8-04:11.**

PURPOSE:

Forfeiture of General Lease No. S-5576, Rex Provisor and Pantip Provisor, husband and wife, Lessee.

LEGAL AUTHORITY:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government lands of Papa Homesteads, Lot 11 situated at Papa, South Kona, Hawaii identified by Tax Map Key: 3rd/8-8-04:11, consisting of approximately 7.21 acres, as shown on the attached map labeled Exhibit A.

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Intensive agriculture purposes.

TERM OF LEASE:

30 years, commencing on 12/09/1998 and expiring on 12/08/2028.

ANNUAL RENTAL:

\$1,460.00 due in semi-annual payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5576, Pantip Provisor, Lessee, was served a Notice of Default by certified mail dated 3/30/06 for:

- ☒ Failure to keep lease rental payments current
- ☐ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☒ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on 4/01/06, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on 5/31/06. As of 6/14/06, the lease rental payment has not been cured.

As of 6/14/06, the current status of all lease compliance items is as follows:

RENT: Lease rent plus late fees are due in the amount of \$930.00 for the period from 12/09/05 to 6/8/06. \$730.00 for the period from 6/9/06 to 12/8/06 is now delinquent.

INSURANCE: The Lessee has posted the required liability insurance policy expiring on 11/15.07.

PERFORMANCE BOND:

The Lessee has posted the required performance bond in the form of a \$2,920 certificate of deposit.

CONSERVATION PLAN:

The Lessee has not submitted a completed conservation plan but has shown an effort in working with the Kona Soil and Water Conservation District to complete a plan.

At its meeting of February 13, 1998, the Board authorized the sale of lease at auction of the above mentioned property. General Lease No. S-5576 was awarded to Rex Provisor and Pantip Provisor, husband and wife as tenants in the entirety on December 19, 1998. Mr. Provisor passed away on June 27, 1999 prior to his completing the development of the property.

At its meeting of January 10, 2003, under agenda item D-18, the Board authorized the forfeiture of General Lease No. S-5576 as a result of default in the rental payment and liability insurance agreement. A payment for the rent was made on the day of the Board meeting and a certificate of liability insurance was provided. The Board, at its meeting of February 28, 2003 under agenda item D-2 rescinded its previous action and reinstated the lease.

The Lessee has since been served notice of default for rent on July 29, 2004. This default was cured August 9, 2004.

There has been no further development of the property by Mrs. Provisor. Staff has contacted members of the Provisor family in an effort to determine any future intent in the development of the property. Bruce Provisor, the son of Rex and Pantip Provisor has contacted HDLO and stated that his mother was currently overseas and was not sure when she would be returning. The rest of the Provisor family live on the mainland and no one has shown any interest in farming the lease land.

Staff is recommending the cancellation of General Lease No. S-5576 effective the date of this Board submittal and authorize the retention of the Performance Bond as liquidated damages.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-5576 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5576 as liquidated damages;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of June 23, 2006, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-5576 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,

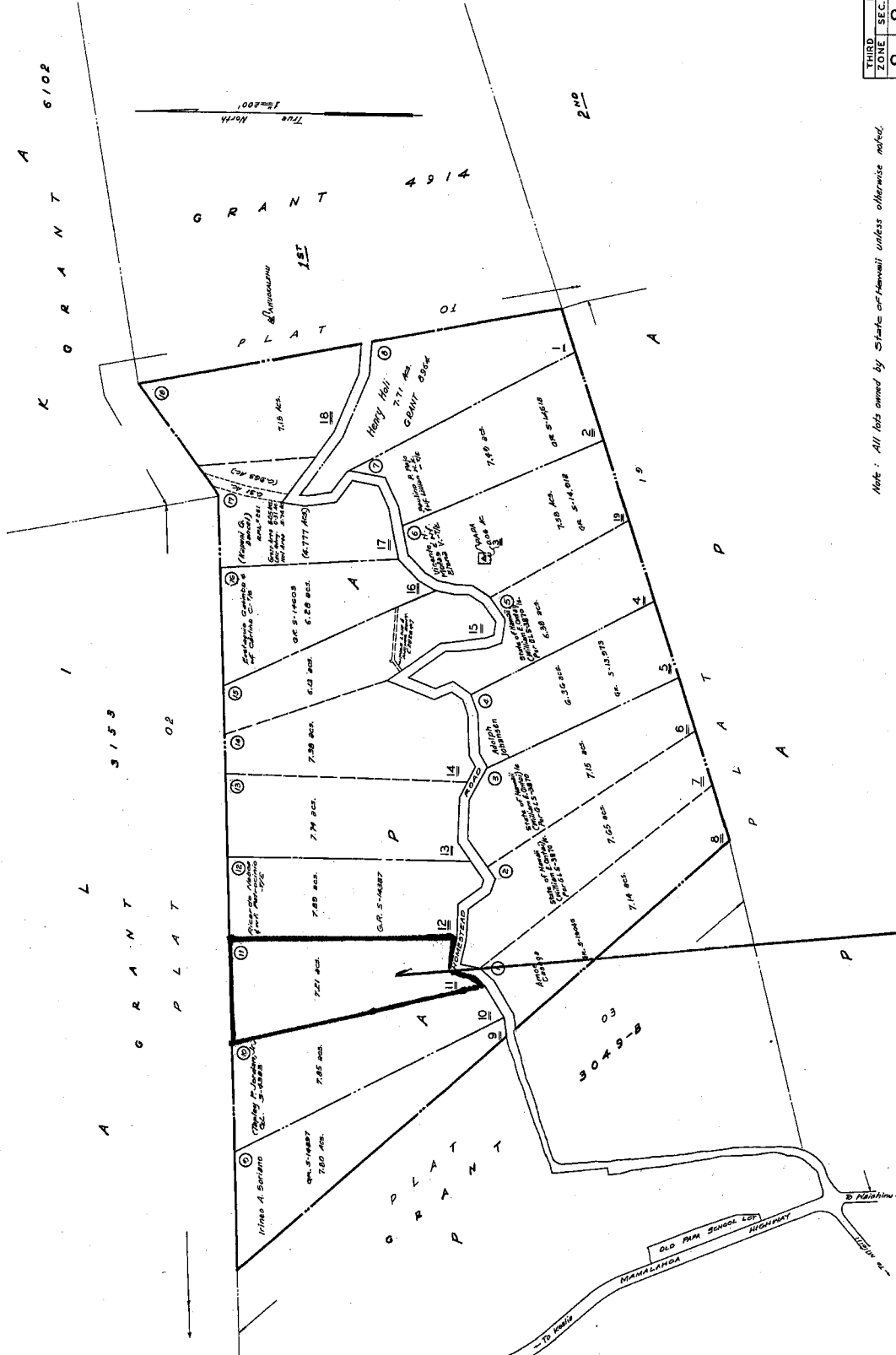

Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

EXHIBIT A

8 8 04



THIRD ZONE	DIVISION SEC.	PLAY
8	8	04

ADVANCE SHEET
CONTAINING PARCELS
SUBJECT TO CHANGE
SCALE: 1" = 200'

Note: All lots owned by State of Hawaii unless otherwise noted.

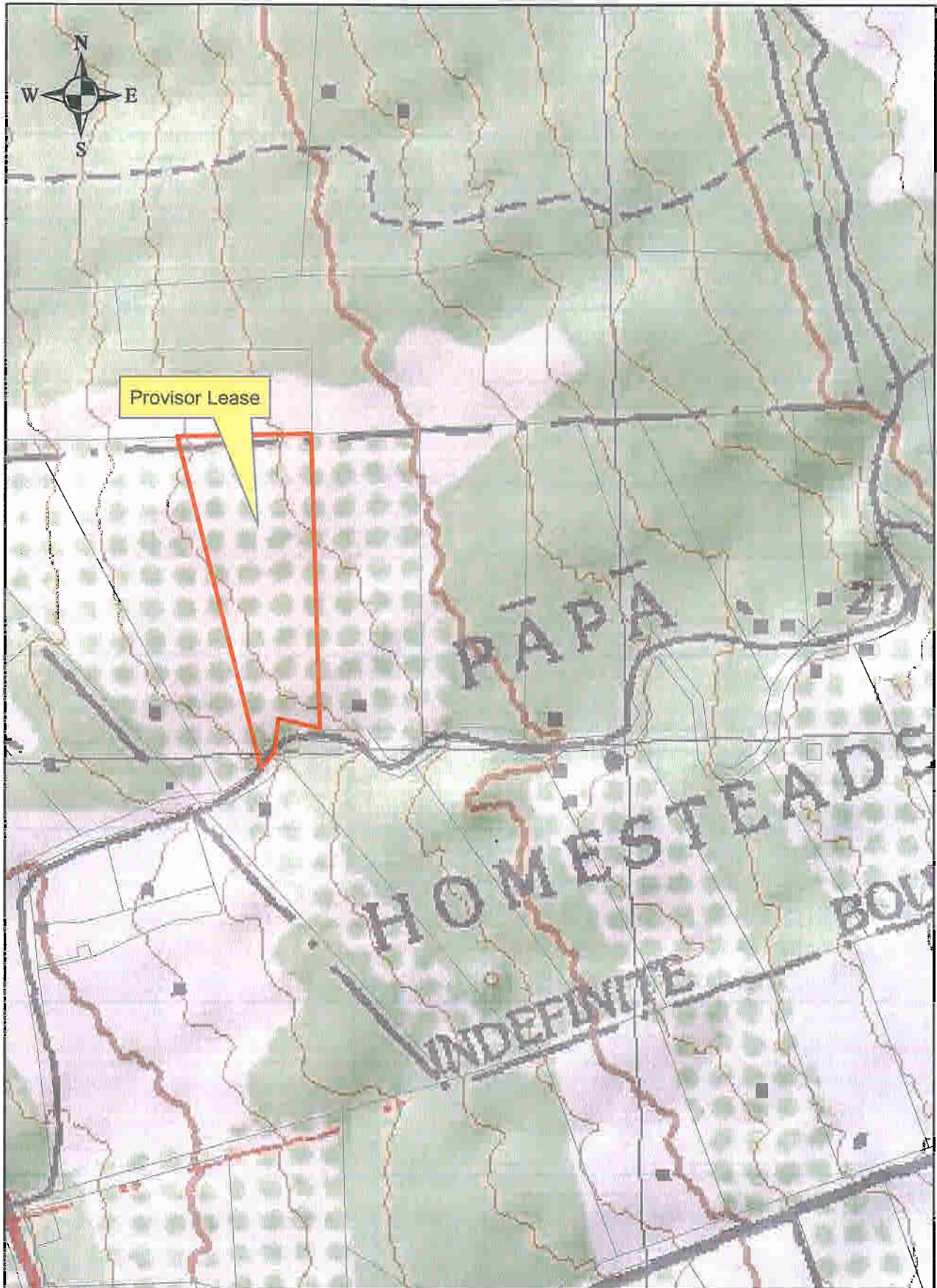
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SUBJECT PROPERTY

PAPA HOMESTEADS, PAPA 1ST, SOUTH KONA, HAWAII.

DWG No. 2003
SOURCE: KAHALU, HAWAII, 1936

GL S-5576



540 270 0 540 Feet